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INTERSTATE COMMERCE COMMISSION

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**CONDITIONAL SALE AGREEMENT**

**Dated as of November 15, 1971**

**between**

**GENERAL MOTORS CORPORATION  
(Electro-Motive Division)**

**and**

**SECURITY PACIFIC NATIONAL BANK**

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**CONDITIONAL SALE AGREEMENT** dated as of November 15, 1971, between the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof) and SECURITY PACIFIC NATIONAL BANK, a national banking association (hereinafter sometimes called the Company).

WHEREAS the Manufacturer has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Company is executing a lease of the Equipment as of the date hereof to Grand Trunk Western Railroad Company, as lessee (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS the Lessee is assigning to the Company, pursuant to an Assignment of Purchase Agreement dated as of the date hereof in substantially the form annexed hereto as Annex D, a certain purchase agreement or agreements between the Lessee and the Manufacturer covering the Equipment;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery

of and pay for (as hereinafter provided) the Equipment, each unit of which will be new standard-gauge railroad equipment constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however,* that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Article 20 hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 31, 1971 (unless such date is extended by the Company and the Vendor by appropriate written agreement), shall be ex-

cluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion, the Vendor and the Company shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Lessee), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative of the Company for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company, conform to the Specifications and to all applicable Interstate Commerce Commission and Department of Transportation requirements and specifications and are marked in accordance with the provisions of Article 8 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 2 of Annex A hereto.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. The base price is subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Lessee, but may not be increased by more than 5% without the written approval of any assignee of the Manufacturer. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) of the units of the Equipment for which settlement has theretofore and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$2,700,000, the Manufacturer (and any assignee of the Manufacturer) and the Company will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, specified by the Company, as will, after giving effect to such exclusion, reduce such aggregate of the Invoiced Purchase Prices under this Agreement to not more than \$2,700,000.

The Equipment shall be settled for in not more than two groups (the Equipment being settled for in each such group being hereinafter called a Group). The term "Closing Date" with respect to each Group shall mean such date, not earlier than December 1, 1971, occurring not more than ten days following presentation by the Manufacturer to the Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer and the Lessee by telephonic or telegraphic notice (confirmed in writing) to the Company and the Vendor at least five business days prior to the Closing Date designated therein (or such lesser number of days as may be agreed to by the Company and the Vendor). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Subject to the conditions specified in the last paragraph of this Article 3, the Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group (i) an amount equal to 30% of the aggregate Purchase Price of such Group, as set forth in the invoice or invoices therefor (said invoiced purchase price being herein called the Invoiced Purchase Price), plus (ii) the amount by which (x) 70% of the aggregate Invoiced Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made exceeds (y) the sum of \$1,890,000, and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Price of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (such portion being herein called the Conditional Sale Indebtedness) shall be payable on July 15, 1977, and subsequent instalments shall be payable semiannually thereafter on each January 15 and July 15, to and including January 15, 1987 (or, if any such date is not a business day, on the next succeeding

business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness in respect of a Group shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of 8% per annum and such interest shall be payable, to the extent accrued, on January 15 and July 15 of each year, commencing January 15, 1972. The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest at the rate of 9% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying the Conditional Sale Indebtedness prior to the dates it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price of each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and

that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an agreement and assignment (hereinafter called the Assignment) between the Manufacturer and John Hancock Mutual Life Insurance Company (hereinafter called the Assignee).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the following conditions:

- (a) no event of default under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default shall have occurred and be continuing;

- (b) the Assignee shall have paid or caused to have been paid to the Manufacturer the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 3 and in the Assignment; and

- (c) the Company shall have received signed counterparts of all documents required by the terms of the Assignment to be delivered to the Assignee in respect of payment for such Group of Equipment, the opinions of counsel required by § 14 of the Lease, and such other documents as the Company may reasonably request.

Notwithstanding any other provisions of this Agreement, it is understood and agreed by the Vendor that liability of the Company for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and Articles 20 and



21 hereof and payments under Article 12 hereof resulting from claims against the Company not related to the ownership by the Company of the Equipment, shall not exceed an amount equal to the income and proceeds from the Equipment, and such payments shall be made by the Company only to the extent that the Company shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Company shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Company as above provided. In addition, the Vendor agrees and understands that the Company (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the obligations thereunder of the Lessee or its guarantor under the Lease (such guarantor being hereinafter called the Guarantor) and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Lessee or the Guarantor of any of their agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee, the Guarantor and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean, if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received

by the Company at any time after such event and during the continuance thereof: (a) all amounts of rental (or damages under clause (i) of subparagraph (b) of § 9 of the Lease) and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment pursuant to the Lease and payments equivalent to such amounts and (b) any and all payments or proceeds received by the Company for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Company and as shall equal the portion of the Conditional Sale Indebtedness (including payments in respect of Casualty Occurrences) and/or interest thereon then due and payable or due and payable on the January 15 or July 15 next succeeding the date such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Vendor to proceed against the Equipment or the Lessee or any guarantor of the obligations of the Lessee as provided for herein or in the Lease or otherwise for the full unpaid Purchased Price of the Equipment and interest thereon or any other payment due and payable hereunder. The Vendor agrees, however, that in the event it shall obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain security title to and property in the Equipment until the Company shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Lessee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment (except such as can be removed without damage to and without impairing the originally intended function or use of the Equipment, including, without limitation, racks or partitions, and which have been added to the Equipment by the Company or the Lessee, the cost of which is not included in the Purchase Price of the Equipment and which are not required for the operation or use of the Equipment) and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens, security interests and other encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 22 hereof, and will execute in the same

manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificates within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), fully inform the Vendor in regard thereto. On the next succeeding January 15 or July 15, whichever is the earlier, the Company shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to the *pro rata* prepayment of each instalment of

the Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of Conditional Sale Indebtedness represented by each such instalment) and the Company will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, calculated as provided in the fourth paragraph of Article 3 hereof.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of title to and property in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like ratio as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

ARTICLE 6. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain

and keep each unit of the Equipment in good order and repair, reasonable wear and tear excepted.

ARTICLE 7. *Reports and Inspections.* On or before March 1 in each year, commencing with the year 1973, the Company will cause to be furnished to the Vendor an accurate statement as of the preceding January 1 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 8 hereof have been preserved or replaced.

ARTICLE 8. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words, "JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, BOSTON, MASSACHUSETTS—SECURITY OWNER", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and word or words shall have

been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of a new identifying number to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Company may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Company, the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of their interests therein.

ARTICLE 9. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes [except gross receipts taxes in the nature of or in lieu of sales taxes]), duties, license fees, charges, fines or penalties of any kind (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof, all of which impositions the Com-

pany assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however*, that the Company shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of invoices therefor.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Company



or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, materially adversely affect the property or right of the Vendor hereunder.

ARTICLE 11. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; *provided, however*, that the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies of, the Vendor under this Agreement. The Vendor will not terminate or impair the Lessee's possession or use of the Equipment subject to the Lease so long as the Lessee is not in default under the Lease. The Company hereby agrees that it will not exercise any of the remedies provided in the case of any Event of Default under and as defined in the Lease unless it shall notify the Vendor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default shall have occurred and be continuing hereunder, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used by the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof upon the lines of railroad owned or operated by the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof or upon lines of railroad over which the Lessee or the Guar-

antor or any affiliated or subsidiary corporation thereof has trackage or other operating rights or over which railroad equipment of the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof is regularly operated pursuant to contract, and the Equipment may be used upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Agreement. The Equipment may be subleased by the Lessee to such subsidiary or affiliated corporations of the Lessee or Canadian National Railway Company as are, at the time such sublease is executed and in effect, domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however*, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and all terms and conditions hereof. The Company may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge, security interest or encumbrance upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, materially adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or

levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities; Warranty of the Manufacturer.* The Company agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 2 of Annex A hereto.

ARTICLE 14. *Patent Indemnities.* The agreement of the parties relating to patent indemnification contained in Item 3 of Annex A hereto is herein incorporated in this Article 14 with the same effect as if herein set forth.

ARTICLE 15. *Assignments.* The Company will not assign or transfer its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company, may be assigned by the Vendor and reassigned by its assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 13 and 14 hereof and Annex A hereto, or relieve the Company of its obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 9 and 13 hereof or in Annex A hereto or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Company recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of an assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which

the Equipment shall be operated relating to such names and word or words for use on railroad equipment covered by conditional sale agreements. The cost of marking such names and word or words with respect to the first assignee of this Agreement shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to an agent bank or any successor agent bank) shall be borne by the subsequent assignee.

In the event of any such assignment, the Company will, in connection with settlement for any Group of the Equipment, deliver to the assignee of the units of the Equipment in such Group, at least five business days prior to the Closing Date in respect of such Group (or such lesser number of days as such assignee shall agree to), all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement (except for any opinion of counsel for the assignee), in such number of counterparts as may reasonably be requested.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for 10 days; or

(b) The Company shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) An Event of Default shall occur under the Lease;

then at any time after the occurrence of such an Event of Default the Vendor may, upon written notice to the Company and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 11

hereof, cause the Lease immediately upon such notice to terminate (and the Company acknowledges the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such declaration at the rate of 9% per annum and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company (subject to the provisions of the last paragraph of Article 3 hereof) wherever situated.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Company in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no Declaration of Default or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor (subject to the rights of the Lessee under the Lease referred to in Article 11 here-



of) take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Lessee or wherever the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or the Lessee, with or without process of law.

In case the Vendor shall demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Vendor, the Company shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall reasonably be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Lessee until the earlier of (x) the date the Vendor shall have leased, sold or otherwise disposed of the same or (y) the 270th day from the date the Equipment shall have been placed for storage on such lines or premises. For such purpose the Company agrees to cause to be furnished, without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this agreement between the parties, and , upon application to any court of equity having jurisdiction in the premises,

the Vendor shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice within 30 days after a Declaration of Default. In the event that the Vendor should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Company in the Equipment will thereupon terminate and all payments made by the Company may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Company, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; and *provided, further, however*, that if the Company or any other person notified under the terms of

this paragraph shall object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

The Vendor, with or without the retaking of possession thereof, at its election and upon reasonable notice to the Company and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Lessee) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if prior to such sale or prior to the making of a contract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however*, that the Company shall be given written notice of such sale as provided hereinabove. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest

on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company, subject to the provisions of the last paragraph of Article 3 hereof, shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company.

The Company, subject to the provisions of the last paragraph of Article 3 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company

to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* Prior to the delivery and acceptance of any unit of the Equipment, the Company will cause this Agreement, any assignments hereof by the Company and any supplements hereto and thereto, and prior to the settlement for such unit, the Company will cause any assignment hereof by the Manufacturer and any supplement thereto, in each case (i) to be filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, (ii) to be deposited in the office of the Registrar General of Canada (and will cause the required notice of

such deposit forthwith thereafter to be published in *The Canada Gazette*) in accordance with Section 86 of the Railway Act of Canada (1970-RSC), and (iii) to be filed in the office of the Minister of Financial and Commercial Affairs of the Province of Ontario, Canada in accordance with Section 3(1) of the Conditional Sales Act of Ontario. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States and the Province of Ontario, Canada, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Company will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 21. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to the preparation and execution of this Agreement and the first assignment of this Agreement and, if the first assignee is not acting as an agent or trustee, any subsequent assignment to such an agent or trustee (including the fees and expenses of such agent or trustee or successor thereto), or any instrument supplemental thereto, including all reasonable fees and expenses of special counsel for the first assignee of this Agreement.

ARTICLE 22. *Notice.* Any notice hereunder to any party designated below shall be deemed to be properly

served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) the Company: P. O. Box 2097 Terminal Annex, Los Angeles, California 90051, *attention of* Leasing Division;

(b) the Manufacturer: the address specified in Item 2 of Annex A hereto;

(c) any assignee of the Vendor, or of the Company: such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief place of business is in California.

ARTICLE 23. *Satisfaction of Undertakings.* The obligations of the Company under Articles 6, 7, 8, 9, 10, 12, 13 and the second paragraph of Article 17 hereunder shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 4, 5, 7, 8, 10 and 11 of the Lease except, in respect of Article 12, to the extent excepted pursuant to the first sentence of the last paragraph of Article 3 hereof. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 16.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement and the Annexes hereto exclusively and completely state the rights and agreements of the Vendor and the Company with respect to the Equipment and supersede all other agreements, oral or written, with respect to



the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Company.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, the applicable recording laws of Canada and of the Provinces and Territories thereof and such additional rights arising out of the filing, recording, registering or depositing hereof and of any assignment hereof and out of the marking on the Equipment as shall be conferred by the laws of the several jurisdictions in which the Equipment may be located and in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited.

ARTICLE 26. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 27. *Execution.* This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of November 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or officials thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

[CORPORATE SEAL]

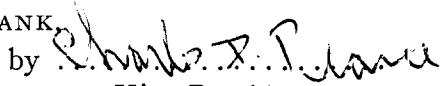
by   
Vice President

Attest:

  
Assistant Secretary

SECURITY PACIFIC NATIONAL  
BANK,

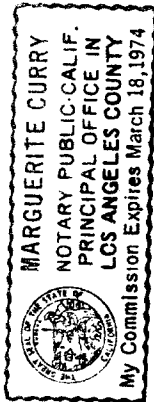
[CORPORATE SEAL]

by   
Vice President

Attest:

  
Assistant Secretary

STATE OF CALIFORNIA  
CITY AND COUNTY OF LOS ANGELES } ss.:



On this 7 day of December, 1971, before me personally appeared Charles D. Pearce, to me personally known, who, being by me duly sworn, says that he is a Vice President of SECURITY PACIFIC NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Marguerite Curry  
Notary Public

My Commission expires

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this 8 day of December, 1971, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

J. Sawyer  
Notary Public

My Commission expires October 28, 1973

## ANNEX A

Item 1: General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60525.

Item 2: The Manufacturer warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 1 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called the Agreement) and is suitable for the ordinary purposes for which the Equipment is used and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Manufacturer agrees to correct such defects, which examination shall disclose to the Manufacturer's satisfaction to be defective, by repair or replacement F. O. B. factory and such correction shall constitute fulfillment of the Manufacturer's obligation with respect to such defect under this warranty.

The Manufacturer warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Manufacturer.

**There are no warranties with respect to material and workmanship, expressed or implied, made by the Manufacturer except the warranties set out above.**

Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there will be incorporated in each unit

of the Equipment a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

The Manufacturer reserves the right to make changes in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of the Equipment previously delivered to the Lessee.

The Manufacturer further agrees with the Lessee that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Lessee of any of its rights under this Item 2.

- Item 3: Except to the extent the Manufacturer is obligated under the Agreement to indemnify, protect and hold harmless the Company and each assignee of any of the rights of the Manufacturer under the Agreement, the Lessee agrees to indemnify, protect and hold harmless the Company and each such assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each such assignee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right.

The Manufacturer shall defend any suit or proceeding brought against the Company, the

Lessee and/or each assignee of the Manufacturer's rights under this Agreement so far as the same is based on a claim that the Equipment of Manufacturer's specification, or any part thereof, furnished under the Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Manufacturer's expense) for the defense of same, and the Manufacturer shall pay all damages and costs awarded therein against the Company, the Lessee and/or any such assignee.

In case any unit of the Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, the Manufacturer shall at its option and at its own expense either procure for the Company, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with non-infringing equipment subject to the Agreement, or modify it so it becomes non-infringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Manufacturer's rights under the Agreement if the Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Article 5 of the Agreement.

The Manufacturer will not assume liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Manufacturer for patent infringement by the Equipment or any part thereof.

ANNEX B						
Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Road Numbers (all numbers inclusive)	Unit Base Price	Total Base Price
2,000 h.p. GP-38 AC Diesel Locomotives	Manufacturer's Proposal 70K-33 dated November 13, 1970, Specification 8081 dated January 1, 1971, as amended by 8081-3 dated January 1, 1971.	McCook, Illinois	12	5800-5811	\$225,000	\$2,700,000
						Delivery
						Prior to December 31, 1971, at McCook, Illinois

**ANNEX C**

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**LEASE OF RAILROAD EQUIPMENT**

**between**

**SECURITY PACIFIC NATIONAL BANK**

**and**

**GRAND TRUNK WESTERN RAILROAD COMPANY**

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**Dated as of November 15, 1971**

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**LEASE OF RAILROAD EQUIPMENT** dated as of November 15, 1971, between SECURITY PACIFIC NATIONAL BANK, a national banking association (hereinafter called the Lessor) and GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into a Conditional Sale Agreement dated as of November 15, 1971 (hereinafter called the Conditional Sale Agreement), with General Motors Corporation (Electro-Motive Division) (hereinafter referred to as the Manufacturer), wherein the Manufacturer agrees to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto; and

WHEREAS, the Manufacturer proposes to assign its interest in the Conditional Sale Agreement to John Hancock Mutual Life Insurance Company (hereinafter referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said railroad equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to December 31, 1971 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, Canadian National Railway Company, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), of which the Lessee is a wholly-owned subsidiary, has agreed, subject to receipt of the approval of the Governor in Council, to guarantee to the Lessor and the Vendor, as provided in a Guaranty Agreement to be dated as of November 15, 1971 (hereinafter called the Guaranty Agreement), with the Lessor and the Vendor, the due and punctual payment of the sums pay-

able by, and the due and punctual performance of all other obligations of, the Lessee under this Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America or Canada at which, and on the date or dates on which, such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. In no event shall the Lessee place any Unit in service or otherwise use any Unit prior to the Lessee's acceptance of delivery of such Unit hereunder.

The Lessee represents and warrants that, at the time of delivery of each Unit to the Lessee, such Unit will not have been used by the Lessee and no amortization or depreciation will have been claimed by the Lessee with respect thereto.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 61 consecutive quarterly payments, payable on the business day next pre-

ceding January 15, April 15, July 15 and October 15 of each year commencing January 15, 1972. The first of such quarterly payments shall be in an amount equal to .0198888% of the Purchase Price (as defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the Conditional Sale Agreement to January 15, 1972; the next 20 of such payments shall be in an amount equal to 1.40000% of the Purchase Price of each Unit; and the remaining 40 of such payments shall be in an amount equal to 3.12598% of the Purchase Price of each Unit.

All payments provided for in this Lease to be made to the Lessor shall be paid to the Lessor at P. O. Box 2097, Terminal Annex, Los Angeles, California 90051, *attention of Leasing Division*.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatement, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturer or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against use of all or any of the Units by the Lessee or any other person, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the

times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final quarterly payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subordinate, junior in rank and subject to the rights of the Vendor under the Conditional Sale Agreement.

§ 4. *Identification Marks.* The Lessee will cause such Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,  
BOSTON, MASSACHUSETTS—SECURITY OWNER”

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in ac-

cordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or Canadian (Dominion or Provincial) or Mexican taxes (other than any United States federal income tax and, to the extent that the Lessor receives credit for such taxes against its United States federal income tax liability, any Canadian [Dominion or Provincial] or Mexican income tax, payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, duties or license fees, and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, duties, license fees, charges, fines and penalties being hereinafter called impositions), hereafter levied or imposed upon or in connection with or measured by, this Lease or any sale,

rental, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof or of the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. At the option of the Lessor, such payment of impositions by the Lessee shall be made directly to the appropriate taxing authority. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, materially adversely affect the property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor pursuant to Article 9 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Manufacturer and the Vendor pursuant to said Article 9.

In the event any reports with respect to impositions are

required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the Casualty Value of any Unit execute and deliver to or upon the order of the Lessee a bill of sale (without warranties) for such Unit or for any Unit abandoned pursuant to § 13 hereof.

The Lessee agrees to prepare and deliver to the Lessor and Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 25 days after written notice from the Lessor specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder or the Guarantor under the Guaranty Agreement) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then



only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease or of the Guarantor under the Guaranty Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the

Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 5% per annum discount, compounded

quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) available to non-railroad lessors of railroad equipment which was lost, not claimed, not available for claim, disallowed or recaptured in respect of any Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that the Lessee shall receive a credit in respect of the amounts payable pursuant to sub-clause (i) of this clause (b) equal to any net proceeds received by the Lessor upon the sale or the releasing of the Units.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance

with respect to the Lessor of, all or any portion of the amortization deduction with respect to any Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment, shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the second paragraph of § 15 of this Lease.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the pur-

pose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until the earlier of the date all such Units have been sold, leased or otherwise disposed of by the Lessor and the 270th day from the date the Lessee shall have placed the Units on such storage tracks, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent to the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor

The Lessee agrees to prepare and deliver to the Lessor and Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 25 days after written notice from the Lessor specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder or the Guarantor under the Guaranty Agreement) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then

only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease or of the Guarantor under the Guaranty Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the



Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 5% per annum discount, compounded

quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) available to non-railroad lessors of railroad equipment which was lost, not claimed, not available for claim, disallowed or recaptured in respect of any Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that the Lessee shall receive a credit in respect of the amounts payable pursuant to sub-clause (i) of this clause (b) equal to any net proceeds received by the Lessor upon the sale or the releasing of the Units.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance

with respect to the Lessor of, all or any portion of the amortization deduction with respect to any Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment, shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the second paragraph of § 15 of this Lease.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the pur-

pose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until the earlier of the date all such Units have been sold, leased or otherwise disposed of by the Lessor and the 270th day from the date the Lessee shall have placed the Units on such storage tracks, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent to the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor

or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or the Guarantor or any affiliated or subsidiary corporation thereof upon the lines of railroad owned or operated by the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof or upon lines of railroad over which the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof has track-age or other operating rights or over which railroad equipment of the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or (ii) to sublease any Unit to such subsidiary or affiliated corporations of the Lessee or the Guarantor as are at the time such sublease is executed domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however*, that the rights of such sub-

§ 21. *Severability; Effect and Modification of Lease.*

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the parties hereto.

§ 22. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of November 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

§ 23. *Law Governing.* This Lease shall be construed in accordance with the laws of California.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly

authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

SECURITY PACIFIC NATIONAL BANK,

[CORPORATE SEAL] by .....  
*Vice President*

Attest:

.....  
*Assistant Secretary*

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

[CORPORATE SEAL] by .....  
*Vice President*

Attest:

.....  
*Assistant Secretary*



STATE OF CALIFORNIA  
CITY AND COUNTY OF LOS ANGELES } ss.:

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of SECURITY PACIFIC NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]       .....  
Notary Public  
My Commission expires

PROVINCE OF QUEBEC }  
CITY OF MONTREAL } ss.:

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]       .....  
Notary Public  
My Commission is for life.

# **SCHEDULE A**

<u>Type and Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
2,000 h.p. GP-38-AC Diesel Locomotives Manufacturer's Proposal 70K-33 dated November 13, 1970, Specification 8081 dated January 1, 1971, as amended by 8081-3 dated January 1, 1971	McCook, Illinois	12	5800- 5811	\$225,000	\$2,700,000

## **ANNEX D**

### **ASSIGNMENT OF PURCHASE AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS, that as of November 15, 1971, GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Assignor), in consideration of the sum of \$10 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DOES HEREBY SELL, ASSIGN, TRANSFER AND SET OVER UNTO SECURITY PACIFIC NATIONAL BANK, a national banking association (hereinafter called the Assignee), all the Assignor's right, title and interest in and to a certain purchase agreement (hereinafter called the Purchase Agreement), between the Assignor and GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter sometimes called the Manufacturer), being dated November 27, 1970, in so far as it relates to the railroad equipment (hereinafter called the Equipment) described in Annex B to the Conditional Sale Agreement dated as of November 15, 1971 (hereinafter called the Conditional Sale Agreement), between the Assignee and the Manufacturer, together with all and singular the Equipment and all right, title and interest now owned or hereafter acquired by the Assignor in and to the Equipment and in and to the Purchase Agreement except as provided in the Lease of Railroad Equipment dated as of November 15, 1971, between the Assignor and the Assignee, to have and to hold all and each unit of the Equipment and the Purchase Agreement to the Assignee and its assigns for its and their own use forever.

In furtherance and not in limitation of the foregoing, the Assignor recognizes that, concurrent with the execution and delivery of this Assignment, the Assignee is arranging for the purchase of the Equipment pursuant to the Condi-

tional Sale Agreement, which is being assigned pursuant to an Agreement and Assignment dated as of November 15, 1971 (hereinafter called the Assignment), between the Manufacturer and John Hancock Mutual Life Insurance Company, and that the Conditional Sale Agreement permits (under Articles 2 and 3 thereof) the exclusion therefrom of, and (under Article 3 thereof) nonpayment for, and the Assignment permits (under Section 5 thereof) nonpayment for, all or any portion of the Equipment under the circumstances described in said Articles and said Section. In respect thereof, the Assignor covenants with the Assignee, and the Manufacturer as a third party beneficiary hereof, that, in the event of any such exclusion of or nonpayment for units of the Equipment, the Assignor will be obligated to accept all units of the Equipment completed and delivered by the Manufacturer and to pay the full purchase price therefor not later than 90 days after such payment was due, together with interest from the date such payment was due to the date of payment by the Assignor at the average prime rate of interest charged by the five largest New York banks in effect at 11:00 a.m., New York Time, on the date such payment was due. Such payment by the Assignor shall be made in cash, either directly or, in case the Assignor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Assignor shall determine. The Assignor warrants that none of the units of the Equipment has been delivered by the Manufacturer and no payment has been made in respect thereof to the Manufacturer.

The Assignor does hereby represent that it is the lawful owner, free from all liens, security interests and encumbrances, of the Purchase Agreement and that the Assignor has the right to sell and assign the Purchase Agreement as set forth herein and that the Assignor will warrant and

the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Conditional Sale Agreement, this Lease and any assignment thereof; and

B. the Conditional Sale Agreement, this Lease and any assignment hereof to the Vendor have been duly authorized, executed and delivered by the Lessor and constitute legal and valid agreements binding upon the Lessor and enforceable in accordance with their terms; and

(ii) of the written opinion of counsel for the Manufacturer to the effect that at the time of delivery thereof to the Lessor under the Conditional Sale Agreement, each Unit was free of all claims, liens, security interests and other encumbrances except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under this Lease.

§ 15. *Federal Income Taxes.* The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter referred to as the Code), to an owner of property, including (without limitation) an allowance for the Rapid Amortization Deduction (as defined in § 9 of this Lease) available to non-railroad lessors of railroad equipment.

If (other than for the reasons set forth below) the Lessor shall lose, or shall not have or shall lose the right to claim, or if (other than for the reasons set forth below) there shall be disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to any Unit, the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the

Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment on the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Rapid Amortization Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer by the Lessor (other than by the assignment of this Lease to the Vendor) of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Conditional Sale Agreement or of the assignment of this Lease to the Vendor without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the Rapid Amortization Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Rapid Amortization Deduction; or

(v) the failure of the Lessor to have sufficient income to benefit from the Rapid Amortization Deduction.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit, exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable to such Rapid Amortization Deduction disallowed, computed at the rate of 8% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 15. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

On or before the first Closing Date occurring under the Conditional Sale Agreement, the Lessor, shall have received

a written opinion of Messrs. Sheppard, Mullin, Richter & Hampton addressed to the Lessor to the effect that for federal income tax purposes:

A. the Lessor will be considered the owner of the Units;

B. the Lessor will be entitled at the election of the Lessor to Rapid Amortization Deductions with respect to such Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of Section 184(d) of the Code); and

C. the Lessor will be entitled to deductions under Section 163 of the Code with respect to interest on the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement.

§ 16. *Mileage Allowance; Subrogation.* Provided the Lessee is not in default hereunder, the Lessee shall be entitled to (i) all mileage allowances and other moneys payable by reason of the use of the Units, and any such mileage allowances or other moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, including settlements pursuant to the rules of the Association of American Railroads, up to an amount equal to the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, paid by the Lessee to the Lessor or the actual expense of repair of a Unit not suffering a Casualty Occurrence paid by the Lessee, as set forth in a certificate of the Treasurer or Chief Accounting Officer of the Lessee, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of,



receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

§ 17. *Additional Covenants and Guaranty of the Lessee.* As an inducement to the Vendor to enter into the assignment of the Conditional Sale Agreement and as an inducement to the Lessor to enter into this Lease, the Lessee unconditionally guarantees to the Vendor, and covenants with the Lessor to guarantee unconditionally to the Vendor, the due and punctual performance of all obligations of the Lessor and the due and punctual payment of any and all sums payable by the Lessor under the Conditional Sale Agreement including, but not limited to, that portion of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreement) payable pursuant to subparagraph (b) of the third paragraph of Article 3 thereof (except for the obligations of the Lessor to make payment of the sums payable by the Lessor pursuant to (i) subparagraph (a) of the third paragraph of Article 3 and (ii) Articles 20 and 21, thereof) when due, whether at stated maturity or by declaration or otherwise, and in case any such payments or obligations are not so made or performed, the Lessee agrees punctually to pay or perform the same, irrespective of any enforcement against the Lessor of any of the rights of the Vendor under the Conditional

Sale Agreement; *provided, however*, that there shall be no obligation upon the Lessee to make the payments or perform the obligations aforementioned in this § 17 while or for so long as the Lessee shall not be in default under this Lease. The Lessee hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Lease or the Conditional Sale Agreement or any other conduct of the Lessor, the Vendor and/or the Lessee which might otherwise constitute a legal or equitable discharge of a surety or guarantor, and irrespective of the last paragraph of Article 3 of the Conditional Sale Agreement or any other circumstances which might limit the recourse of the Vendor to the Lessor or of the Lessor or the Vendor to the Lessee. The Lessee hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor or the Vendor of any of their respective rights hereunder and no action by the Lessor or the Vendor to enforce any of their respective rights or failure to take, or delay in taking, any such action shall affect the obligations of the Lessee hereunder or under the Conditional Sale Agreement.

It is understood and agreed between the Lessor and the Lessee that any and all sums paid by the Lessee pursuant to the guaranteed obligations aforementioned in this § 17 shall be thereupon deemed to have been received and paid in reduction or satisfaction, to the extent thereof, of any amount then due or payable by the Lessee to the Lessor under this Lease.

Subject to the foregoing, in the event that the Lessee shall make any payments to the Vendor under the Conditional Sale Agreement on account of its guaranty hereunder, the Lessee hereby covenants and agrees that it shall

not acquire any rights, by subrogation or otherwise, against the Lessor or with respect to any of the Units by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Lessee; *provided, however*, that after the payment by the Lessee to the Vendor under the Conditional Sale Agreement of all sums payable by the Lessor under the Conditional Sale Agreement, the Lessee shall, by subrogation, be entitled to the rights of the Vendor under the Conditional Sale Agreement against the Lessor by reason of any such payment made by it pursuant to this § 17, to the extent, but only to the extent, that the Lessor had received "income and proceeds from the Equipment" (as defined in Article 3 of the Conditional Sale Agreement) and has not applied such income and proceeds to the payment, in accordance with the Conditional Sale Agreement, of sums payable by the Lessor to the Vendor under the Conditional Sale Agreement.

§ 18. *Recording; Expenses.* Prior to the delivery and acceptance of any of the Units, the Lessor will, at the expense of the Lessor, cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be duly deposited in the office of the Registrar General of Canada; and the Lessor will, at the expense of the Lessor, cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC).

The Lessee will, from time to time and at its expense, do and perform any act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its

counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such execution, acknowledgement and delivery.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each, respectively, bear the fees and disbursements of any counsel which it may respectively retain.

§ 19. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9% per annum of the amount of the overdue rentals for the period of time during which they are overdue.

§ 20. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, P. O. Box 2097 Terminal Annex,  
Los Angeles, California 90051, *attention of* Leasing  
Division;

if to the Lessee, 131 West Lafayette Boulevard,  
Detroit, Michigan 48226, *attention of* the Secretary;

and at P. O. Box 8100, Montreal 101, Quebec,  
Canada, *attention of* the Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 21. *Severability; Effect and Modification of Lease.*

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the parties hereto.

§ 22. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of November 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

§ 23. *Law Governing.* This Lease shall be construed in accordance with the laws of California.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly

authorized officers and their respective corporate seals to be  
hereunto affixed and duly attested, as of the date first above  
written.

SECURITY PACIFIC NATIONAL BANK,

by .....  
[CORPORATE SEAL] *Vice President*

Attest:

.....  
*Assistant Secretary*

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

by .....  
[CORPORATE SEAL] *Vice President*

Attest:

.....  
*Assistant Secretary*

STATE OF CALIFORNIA  
CITY AND COUNTY OF LOS ANGELES } ss.:

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of SECURITY PACIFIC NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]       .....  
Notary Public  
My Commission expires

PROVINCE OF QUEBEC }  
CITY OF MONTREAL       } ss.:

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]       .....  
Notary Public  
My Commission is for life.

# **SCHEDULE A**

<u>Type and Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
2,000 h.p. GP-38-AC Diesel Locomotives Manufacturer's Proposal 70K-33 dated November 13, 1970, Specification 8081 dated January 1, 1971, as amended by 8081-3 dated January 1, 1971	McCook, Illinois	12	5800- 5811	\$225,000	\$2,700,000



## **ANNEX D**

### **ASSIGNMENT OF PURCHASE AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS, that as of November 15, 1971, GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Assignor), in consideration of the sum of \$10 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DOES HEREBY SELL, ASSIGN, TRANSFER AND SET OVER UNTO SECURITY PACIFIC NATIONAL BANK, a national banking association (hereinafter called the Assignee), all the Assignor's right, title and interest in and to a certain purchase agreement (hereinafter called the Purchase Agreement), between the Assignor and GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter sometimes called the Manufacturer), being dated November 27, 1970, in so far as it relates to the railroad equipment (hereinafter called the Equipment) described in Annex B to the Conditional Sale Agreement dated as of November 15, 1971 (hereinafter called the Conditional Sale Agreement), between the Assignee and the Manufacturer, together with all and singular the Equipment and all right, title and interest now owned or hereafter acquired by the Assignor in and to the Equipment and in and to the Purchase Agreement except as provided in the Lease of Railroad Equipment dated as of November 15, 1971, between the Assignor and the Assignee, to have and to hold all and each unit of the Equipment and the Purchase Agreement to the Assignee and its assigns for its and their own use forever.

In furtherance and not in limitation of the foregoing, the Assignor recognizes that, concurrent with the execution and delivery of this Assignment, the Assignee is arranging for the purchase of the Equipment pursuant to the Condi-

tional Sale Agreement, which is being assigned pursuant to an Agreement and Assignment dated as of November 15, 1971 (hereinafter called the Assignment), between the Manufacturer and John Hancock Mutual Life Insurance Company, and that the Conditional Sale Agreement permits (under Articles 2 and 3 thereof) the exclusion therefrom of, and (under Article 3 thereof) nonpayment for, and the Assignment permits (under Section 5 thereof) nonpayment for, all or any portion of the Equipment under the circumstances described in said Articles and said Section. In respect thereof, the Assignor covenants with the Assignee, and the Manufacturer as a third party beneficiary hereof, that, in the event of any such exclusion of or nonpayment for units of the Equipment, the Assignor will be obligated to accept all units of the Equipment completed and delivered by the Manufacturer and to pay the full purchase price therefor not later than 90 days after such payment was due, together with interest from the date such payment was due to the date of payment by the Assignor at the average prime rate of interest charged by the five largest New York banks in effect at 11:00 a.m., New York Time, on the date such payment was due. Such payment by the Assignor shall be made in cash, either directly or, in case the Assignor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Assignor shall determine. The Assignor warrants that none of the units of the Equipment has been delivered by the Manufacturer and no payment has been made in respect thereof to the Manufacturer.

The Assignor does hereby represent that it is the lawful owner, free from all liens, security interests and encumbrances, of the Purchase Agreement and that the Assignor has the right to sell and assign the Purchase Agreement as set forth herein and that the Assignor will warrant and

defend this Assignment against the lawful claims and demands of all persons.

Settlement for the units of Equipment to be acquired from the Manufacturer will be made under the Conditional Sale Agreement as provided in Article 3 thereof.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the date first above written.

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

by .....  
Vice President

[CORPORATE SEAL]

ATTEST:

.....  
Assistant Secretary

The foregoing Assignment is hereby  
accepted as of November 15, 1971.

SECURITY PACIFIC NATIONAL BANK

by .....  
Vice President

**AGREEMENT AND ASSIGNMENT** dated as of November 15, 1971, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Manufacturer), and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY (hereinafter called the Assignee).

WHEREAS, the Manufacturer and SECURITY PACIFIC NATIONAL BANK (hereinafter called the Company), have entered into a Conditional Sale Agreement dated as of November 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 3 thereof and reimbursement for taxes paid or incurred

by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 13 and 14 of the Conditional Sale Agreement or Annex A thereto or relieve the Company from its obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 9 and 13 of, and Annex A to, the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and

only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, how-*

*ever*, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and

paragraph (e) above and stating that (i) the Lessee is a duly organized and existing corporation in good standing under the laws of Michigan and has the power and authority to own its property and carry on its business as now conducted, (ii) the Lease has been duly authorized, executed and delivered by the Lessee and is binding upon the Lessee, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Lease by the Lessee or the consummation of the transactions therein contemplated, or, if any approval is necessary it has been obtained and (iv) upon the due filing and recordation of the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights of the Assignee hereunder or of the Company and the Assignee under the Lease in any state of the United States of America or the District of Columbia;

(h) Opinion dated as of such Closing Date of Messrs. McCarthy & McCarthy, who are acting as special Canadian counsel for the Assignee, addressed to the Assignee and the Lessee, stating that (i) the Conditional Sale Agreement and this Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) and counterparts of such documents have been duly filed in the office of the Minister of Financial and Commercial Affairs of Ontario, and no further act, filing, recording



or deposit (or giving of notice) is required in order fully to protect the rights hereunder of the Assignee in the Conditional Sale Agreement and the Equipment in the Group in the Province of Ontario, Canada against any and all subsequent purchasers or mortgagees and/or from creditors of the Company and the Lessee, (ii) the Lease and the Lease Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) and no other act, filing, recording or deposit (or giving of notice) in respect of the Lease is necessary in order to protect the interests thereunder of the Company and the Assignee in and to the Equipment in Canada, (iii) the Guarantor referred to in the Lease is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty Agreement (as defined in the Lease), (iv) the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms, and (v) no approval is required from any governmental ministry or agency or public regulatory body in Canada with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or if any such approval is required, such approval has been duly obtained;

(i) Opinion dated as of such Closing Date of counsel for the Manufacturer addressed to the Assignee, to the effect set forth in clauses (iii) and (iv) of subparagraph (e) above and stating that (i) the Manufacturer

is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement, this Assignment and the Bill of Sale have been duly authorized, executed and delivered by the Manufacturer and are valid and binding instruments enforceable against the Manufacturer in accordance with their terms; and

(j) Unless payment of the amount, if any, payable under Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) any agreement is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (e) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units of the Equipment in the Group at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, counsel may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States on the opinions of counsel for

the Company, the Manufacturer or the Lessee as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred under the Conditional Sale Agreement.

In the event that the payments required to be made by the Assignee herein shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment in the Group with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agree-

paragraph (e) above and stating that (i) the Lessee is a duly organized and existing corporation in good standing under the laws of Michigan and has the power and authority to own its property and carry on its business as now conducted, (ii) the Lease has been duly authorized, executed and delivered by the Lessee and is binding upon the Lessee, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Lease by the Lessee or the consummation of the transactions therein contemplated, or, if any approval is necessary it has been obtained and (iv) upon the due filing and recordation of the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights of the Assignee hereunder or of the Company and the Assignee under the Lease in any state of the United States of America or the District of Columbia;

(h) Opinion dated as of such Closing Date of Messrs. McCarthy & McCarthy, who are acting as special Canadian counsel for the Assignee, addressed to the Assignee and the Lessee, stating that (i) the Conditional Sale Agreement and this Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) and counterparts of such documents have been duly filed in the office of the Minister of Financial and Commercial Affairs of Ontario, and no further act, filing, recording

or deposit (or giving of notice) is required in order fully to protect the rights hereunder of the Assignee in the Conditional Sale Agreement and the Equipment in the Group in the Province of Ontario, Canada against any and all subsequent purchasers or mortgagees and/or from creditors of the Company and the Lessee, (ii) the Lease and the Lease Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) and no other act, filing, recording or deposit (or giving of notice) in respect of the Lease is necessary in order to protect the interests thereunder of the Company and the Assignee in and to the Equipment in Canada, (iii) the Guarantor referred to in the Lease is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty Agreement (as defined in the Lease), (iv) the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms, and (v) no approval is required from any governmental ministry or agency or public regulatory body in Canada with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or if any such approval is required, such approval has been duly obtained;

(i) Opinion dated as of such Closing Date of counsel for the Manufacturer addressed to the Assignee, to the effect set forth in clauses (iii) and (iv) of subparagraph (e) above and stating that (i) the Manufacturer

is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement, this Assignment and the Bill of Sale have been duly authorized, executed and delivered by the Manufacturer and are valid and binding instruments enforceable against the Manufacturer in accordance with their terms; and

(j) Unless payment of the amount, if any, payable under Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) any agreement is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (e) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units of the Equipment in the Group at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, counsel may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States on the opinions of counsel for

the Company, the Manufacturer or the Lessee as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred under the Conditional Sale Agreement.

In the event that the payments required to be made by the Assignee herein shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment in the Group with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agree-

ment was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company) it is a valid and existing agreement binding upon the Manufacturer and the Company and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of November 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate



names by officers or officials duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION  
(Electro-Motive Corporation),

[CORPORATE SEAL]

by .....  
*Vice President*

Attest:

.....  
*Assistant Secretary*

JOHN HANCOCK MUTUAL LIFE  
INSURANCE COMPANY,

[CORPORATE SEAL]

by .....  
*Senior Investment Officer*

Attest:

.....  
*Assistant Secretary*

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL] .....  
Notary Public  
My Commission expires

COMMONWEALTH OF MASSACHUSETTS }  
COUNTY OF SUFFOLK } ss.:

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Senior Investment Officer of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL] .....  
Notary Public  
My Commission expires

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of, the assignment made by the foregoing Agreement and Assignment is hereby acknowledged as of November 15, 1971.

SECURITY PACIFIC NATIONAL BANK,

by .....  
*Vice President*

**COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT** dated as of November 15, 1971 (hereinafter called "this Assignment"), by and between SECURITY PACIFIC NATIONAL BANK, a national banking association (hereinafter called the Company) and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY (hereinafter called the Investor).

WHEREAS the Company has entered into a Conditional Sale Agreement dated as of November 15, 1971 (hereinafter called the Conditional Sale Agreement), with GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Manufacturer) providing for the sale to the Company of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreement as are delivered to and accepted by the Company thereunder; and

WHEREAS the Manufacturer has assigned its interests in the Conditional Sale Agreement to the Investor, pursuant to an Agreement and Assignment dated as of November 15, 1971; and

WHEREAS the Company and GRAND TRUNK WESTERN RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of November 15, 1971 (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Company under the Conditional Sale Agreement and as an inducement to the Investor to invest in the Conditional Sale Indebtedness (as that term is defined in the Conditional Sale Agreement), the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Investor;

Now, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 13 hereof, the Company hereby assigns, transfers and sets over unto the Investor, as collateral security for the payment and performance of the Company's obligations under the Conditional Sale Agreement, all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, payments with respect to the guarantee of the Conditional Sale Agreement by the Lessee provided for in § 17 of the Lease or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Investor in its own name, or the name of its nominee, or (with the consent of the Company) in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

As agent for the Investor, the Company agrees to accept all Payments to be made by the Lessee and to hold and disburse the Payments in accordance with the instructions of the Investor, and in the absence of any such instructions, *first* to the Investor to satisfy the obligations of the Company under the terms of the Conditional Sale Agreement (subject to the limitations and provisions of the last paragraph of Article 3 thereof) and, *second*, to the extent the Payments are in excess of the amounts required to satisfy such obligations of the Company, the balance of such Payments may be retained by the Company.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Investor to, or transfer, or pass, or in any way affect or modify the liability of the Company under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Investor.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) The Company will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Company; without the written consent of the Investor, the Company will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner

and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Company agrees that any amendment, modification or termination thereof without such consent shall be void.

(b) At the Company's sole cost and expense, the Company will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Company under the Lease.

(c) Should the Company fail to make any payment or to do any act which this Assignment requires the Company to make or do, then the Investor, but without obligation so to do, after first making written demand upon the Company and affording the Company a reasonable period of time within which to make such payment or do such act, but without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Investor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Investor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers, the Investor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Company will reimburse the Investor for such costs, expenses and fees with interest at 9% per annum.

4. The Company does hereby constitute the Investor the Company's true and lawful attorney, irrevocably, with full

power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any actions or institute any proceedings which to the Investor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Conditional Sale Agreement, this Assignment and all rights herein assigned to the Investor shall terminate, and all estate, right, title and interest of the Investor in and to the Lease shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms, (b) the Company has not executed any other assignment of the Lease and the Investor's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement on or



prior to the date hereof and (e) the Lease and the Conditional Sale Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any event of default under the Conditional Sale Agreement or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Conditional Sale Agreement shall occur and be continuing, the Investor may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent with or without bringing any action or proceeding or by a receiver to be appointed by a court, take possession of and operate the Units or any part thereof in accordance with the terms of the Conditional Sale Agreement and do any acts which the Investor deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or invalidate any act done hereunder.

7. The Company covenants and agrees with the Investor that in any suit, proceeding or action brought by the Investor, as assignee of the Company's right, title and interest under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Investor harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors arising out of a breach by the Company of any obligation under the Lease or arising

out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Investor or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Investor in order to confirm or further assure, the interests of the Investor hereunder.

9. The Investor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Investor hereunder.

10. This Assignment shall be governed by the laws of the State of California, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada (1970-RSC).

11. The Company shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Investor at its office at 200 Berkeley Street, Boston, Massachusetts

02117, *attention of* Bond and Stock Department (in the case of notices) or Treasury Department (in the case of payments), or at such other address as the Investor shall designate.

12. The Company will promptly cause this Assignment to be filed and recorded in accordance with § 18 of the **Lease**.

13. Anything herein or in the Lease or in the Conditional Sale Agreement contained to the contrary notwithstanding:

(a) the Company may, but shall be under no obligation to, cure any Event of Default (as Event of Default is defined in § 9 of the Lease) suffered or permitted to occur by the Lessee under the Lease by making any payment (whether of rent, casualty payment, indemnity payment or other payment) or by performing any act which the Lease requires the Lessee to make or perform. Upon the making of any such payment or the performance of any such act by the Company, the Event of Default under the Lease or any event of default under the Conditional Sale Agreement which occurred in consequence of the Lessee's having failed to make such payment or to perform such act, shall for all purposes of both the Lease and the Conditional Sale Agreement be deemed to have been cured to the same extent as if the Lessee had made such payment or performed such act. The curing of any Event of Default by the Company shall not be deemed to impose any obligation or liability upon the Company to cure any subsequent Event of Default suffered or permitted to occur by the Lessee; and

(b) the Investor for itself and its successors and assigns, hereby agrees with the Company and its succes-

sors and assigns, that the Investor will not, so long as no Event of Default under the Lease or an event of default under the Conditional Sale Agreement has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Company to the Investor by this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

SECURITY PACIFIC NATIONAL BANK,  
[CORPORATE SEAL]  
by .....  
Vice President

Attest:

.....  
Assistant Secretary

JOHN HANCOCK MUTUAL LIFE  
INSURANCE COMPANY,

by .....  
Senior Investment Officer

[CORPORATE SEAL]

Attest:

.....  
Assistant Secretary

STATE OF CALIFORNIA  
CITY AND COUNTY OF LOS ANGELES } ss.:

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Vice President of SECURITY PACIFIC NATIONAL BANK, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

[NOTARIAL SEAL]

My Commission expires

COMMONWEALTH OF MASSACHUSETTS } ss.:  
COUNTY OF SUFFOLK

On this       day of December, 1971, before me personally appeared       , to me personally known, who, being by me duly sworn, says that he is a Senior Investment Officer of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

[NOTARIAL SEAL]

My Commission expires

## **GUARANTY AGREEMENT**

**GUARANTY AGREEMENT** dated as of November 15, 1971, among CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), SECURITY PACIFIC NATIONAL BANK, a national banking association (hereinafter called the Lessor) and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY (hereinafter called the Investor).

WHEREAS the Lessor has entered into a Conditional Sale Agreement dated as of November 15, 1971 (hereinafter called the Conditional Sale Agreement), with GENERAL MOTORS CORPORATION, (Electro-Motive Division) (hereinafter called the Manufacturer), providing for the sale to the Lessor of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreement as are delivered to and accepted thereunder by the Lessor;

WHEREAS the Manufacturer has assigned its interest in the Conditional Sale Agreement to the Investor, pursuant to the Agreement and Assignment dated as of November 15, 1971 (hereinafter called the Assignment);

WHEREAS the Lessor and Grand Trunk Western Railroad Company (hereinafter called the Lessee), a wholly owned subsidiary of the Guarantor, have entered into a Lease of Railroad Equipment dated as of November 15, 1971 (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units and pursuant to which the Lessee guarantees payment of certain sums payable by the Lessor under the Conditional Sale Agreement;

WHEREAS the Lessor has assigned the Lease to the Investor pursuant to a Collateral Assignment of Lease and Agreement dated as of November 15, 1971 (hereinafter

called the Collateral Assignment), by and between the Lessor and the Investor;

WHEREAS as an inducement to the Lessor to enter into the Lease with the Lessee and to lease the Units, or any of them, to the Lessee and as an inducement to the Investor to invest in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) pursuant to which the Lessor is financing its purchase of the Units, the Guarantor has agreed to guarantee as hereinafter provided, subject to receipt of the approval of the Governor in Council, all obligations and covenants of the Lessee under the Lease and the Consent, including the guaranty of the Lessee mentioned in the third paragraph of this preamble; and

WHEREAS the approval of the Governor in Council to the guaranty hereinafter set out has been received;

NOW, THEREFORE, in consideration of the premises and the execution and delivery of the Lease and of other good and valuable consideration and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Guarantor hereby unconditionally guarantees to the Lessor and the Investor the due and punctual payment by the Lessee of all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease, including, without limitation, payments under and by virtue of the guaranty set forth in § 17 of the Lease, due and to be due under the Lease or otherwise in respect of the Units thereunder, and the due and punctual performance of all obligations of the Lessee under the Lease.

2. The Guarantor hereby guarantees such payments according to the original terms of the Lease, notwithstanding

ing any reduction or modification of the obligations of the Lessee thereunder brought about by price control, rent control, or other economic stabilization legislation or other measures of the United States Government from time to time in effect.

3. The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of the Lease or this Agreement or any conduct of the Lessee and/or the Lessor which might constitute a legal or equitable discharge of a surety or guarantor and irrespective of any circumstances which might limit the recourse of the Investor or the Lessor to the Lessee. The Guarantor hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver of the Lessor of any of its rights hereunder or under the Lease and no action by the Lessor to enforce any of its rights hereunder or under the Lease or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

4. The Guarantor hereby acknowledges that it has received copies of the Lease, the Conditional Sale Agreement, the Assignment and the Collateral Assignment and is fully aware of all the terms and conditions of each such agreement.

5. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly author-



ized officers and their respective corporate seals hereunder to be affixed and duly attested, as of the date first above written.

CANADIAN NATIONAL RAILWAY  
COMPANY,

by .....  
Vice President

[ CORPORATE SEAL ]

Attest:

.....  
Deputy Secretary

SECURITY PACIFIC NATIONAL  
BANK,

by .....  
Vice President

[ CORPORATE SEAL ]

Attest:

.....  
Assistant Secretary

JOHN HANCOCK MUTUAL LIFE  
INSURANCE COMPANY,

by .....  
Senior Investment Officer

[ CORPORATE SEAL ]

Attest:

.....  
Assistant Secretary

PROVINCE OF QUEBEC }  
CITY OF MONTREAL } ss.:

On this            day of December, 1971, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF CALIFORNIA }  
CITY AND COUNTY OF LOS ANGELES } ss.:

On this            day of December, 1971, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of SECURITY PACIFIC NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

[NOTARIAL SEAL]

My Commission expires

COMMONWEALTH OF MASSACHUSETTS } ss.:  
COUNTY OF SUFFOLK }

On this            day of December, 1971, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Senior Investment Officer of JOHN HANCOCK LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public

[NOTARIAL SEAL]

My Commission expires